

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LONNIE SALAZAR,

Plaintiff,

v.

CV 13-0414 MV/WPL

SOCIAL SECURITY ADMINISTRATION
CAROLYN W. COLVIN, ACTING COMMISSIONER
OF SSA,

Defendant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

On this appeal from a determination of nondisability by the Social Security Administration, Lonnie Salazar has filed a motion to proceed *in forma pauperis* (IFP) under 28 U.S.C. § 1915. (Doc. 2.) The statute requires a person seeking to proceed IFP to submit an affidavit showing a financial inability to pay the required filing fees. *See* 28 U.S.C. § 1915(a); *Lister v. Dep't of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005). Under § 1915(a), “the only determination to be made by the court is whether the statements in the affidavit satisfy the requirement of poverty.” *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004) (internal punctuation omitted).

Although the district court has wide discretion in deciding whether to allow a litigant to proceed IFP, this Court may not act arbitrarily and must provide a sufficient explanation to allow for meaningful appellate review. *See id.* at 1306-07; *see also Lister*, 408 F.3d at 1313 (citing *Martinez* with approval). While IFP status should be granted sparingly in civil cases, a litigant need not be absolutely destitute to qualify for IFP status. *See Martinez*, 364 F.3d at 1306-07. A

litigant should not be forced to become a public charge or abandon his claims because of filing fee requirements. *Id.*

Salazar has submitted an affidavit using a form supplied by the Court. (Doc. 2 Ex. 1.) According to the affidavit, Salazar is forty-eight years old and married. (*Id.* at 1, 5.) He also lists a seven-year-old granddaughter who relies on him and his spouse for support, though it is not clear if she is part of Salazar's household. (*Id.* at 3.) No other dependents are listed.

The affidavit states that Salazar earns no income. (*Id.* at 1.) However, it also states that his wife earns an average gross income of \$3,740 per month. (*Id.*) He says that his family does not own any motor vehicles, home, other real estate, or other assets, and he claims that neither he nor his wife have any money in a bank account or other financial institutions. (*Id.* at 2-3.) Nonetheless, Salazar states that his spouse makes motor vehicle installment payments of \$760 per month, with another \$320 per month going to other transportation expenses. (*Id.* at 4.) An additional \$435 per month is spent on unspecified "other" installment payments. (*Id.*) Salazar's spouse also pays \$650 per month in housing costs for the family (presumably rent, since he does not list a house as an asset and he does not list any homeowner's insurance expenses), with utilities averaging \$250 per month. (*Id.*) Salazar claims total average monthly expenses of \$3,840 per month, though the monthly expenses listed on the affidavit add up to not quite \$3,745. (*See id.* at 4-5.)

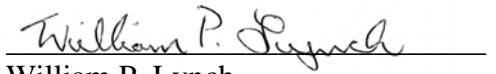
According to the United States Department of Health and Human Services, the 2013 poverty level is \$15,510 per year for a household of two and \$19,530 for a household of three.¹ Even assuming that Salazar's granddaughter constitutes part of his household, Salazar's family income is over \$25,000 above the poverty level ((3740x12) – 19530). Further, although his

¹ See Office of the Assistant Sec'y for Planning & Evaluation, *2013 Poverty Guidelines*, U.S. DEP'T OF HEALTH & HUMAN SERVS., <http://aspe.hhs.gov/POVERTY/13poverty.cfm> (last visited May 6, 2013).

family's stated monthly obligations exceed his spouse's monthly income by almost \$5, several of Salazar's family expenses are excessive for someone claiming that he cannot pay or give security for filing costs while still providing his family with the necessities of life. *See Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). For example, though the current national monthly average "thrifty food plan" cost for a family of two adults in Salazar's age group and a seven-year-old child is about \$480 per month,² Salazar claims family food expenses of \$640 per month. His family's monthly transportation costs of \$1,200 per month (including installment payments, insurance and other expenses) are also excessive for a family that does not own a vehicle, particularly in light of the fact that only one household member is currently working.

In short, Salazar has not established that he meets the indigency requirement for proceeding IFP. *See Adkins*, 335 U.S. at 339. Accordingly, I recommend that the Court deny his motion to proceed IFP (Doc. 2).

THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the Proposed Findings and Recommended Disposition. If no objections are filed, no appellate review will be allowed.


 William P. Lynch
 United States Magistrate Judge

² *See Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average, March 2013*, U.S. Dep't of Agric. (April 2013), <http://www.cnpp.usda.gov/USDAFoodCost-Home.htm>

A true copy of this order was served
 on the date of entry--via mail or electronic
 means--to counsel of record and any pro se
 party as they are shown on the Court's docket.